

SENATE BILL 434

Introduced by Gage, et al.

2/15	Introduced
2/15	Referred to Judiciary
2/16	Hearing
	Died in Committee

1 *Senate* BILL NO. *434*
2 INTRODUCED BY *Rep. Nishet M. Hansen*
3 BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS
4

5 A BILL FOR AN ACT ENTITLED: THE CEMETERY BURIAL SITES AND
6 HUMAN REMAINS PROTECTION ACT; ESTABLISHING REPORTING AND
7 NOTIFICATION PROCEDURES REGARDING DISTURBANCE OF A BURIAL
8 SITE; PROVIDING DISINTERMENT, CURATION, REPATRIATION, AND
9 REINTERMENT PROCEDURES; AND PROVIDING FOR CIVIL AND CRIMINAL
10 PENALTIES."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Short title. [This act] may be
14 cited as the "Cemetery Burial Sites and Human Remains
15 Protection Act".

16 NEW SECTION. Section 2. Legislative findings and
17 intent. (1) The legislature of the state of Montana finds
18 that:

19 (a) the state and its citizens have an obligation to
20 protect from disturbance and vandalism all human skeletal
21 remains, human burial sites, and burial materials, including
22 those in marked, unmarked, unrecorded, or unregistered
23 graves, cemeteries, or burial grounds;

24 (b) marked, unmarked, unrecorded, or unregistered
25 graves, cemeteries, or burial grounds are increasingly

1 subject to pilferage, vandalism, and destruction for
2 commercial purposes, including land development,
3 agriculture, mining, and sale of artifacts;

4 (c) private collection of artifacts results in the
5 destruction of human burial sites. Existing law pertaining
6 to cemeteries reflects the value society places on
7 preserving human burial sites, but the law does not clearly
8 provide equal and adequate protection or incentives to
9 ensure preservation and protection of all human burial sites
10 in the state, regardless of ethnic origin, burial context,
11 or age.

12 (d) while some human skeletal remains and human burial
13 sites may be of interest to science, the needs of the
14 scientific community to gather information and materials
15 from human burial sites must be balanced with the legal,
16 moral, and religious obligations of tribal groups, next of
17 kin, or descendants; and

18 (e) preservation in place is the preferred policy for
19 all human skeletal remains, human burial sites, and burial
20 materials.

21 (2) It is the intent of the legislature to:

22 (a) ensure that all human burials be accorded equal
23 treatment and respect for human dignity without reference to
24 ethnic origin, cultural background, or religious
25 affiliation;

1 (b) provide adequate protection for all interests
2 related to any human burial site encountered during
3 archaeological excavation or agricultural, mining,
4 construction, or other ground-disturbing activities, without
5 causing avoidable or undue delay or hardship for any person
6 who has an interest in using the land on which the burial
7 site is located;

8 (c) balance the interests of scientists, landowners,
9 developers, and others having an interest in a human burial
10 site with the interests, concerns, and obligations of those
11 having a kinship, tribal, cultural, or religious affiliation
12 with the burial site.

13 NEW SECTION. Section 3. Definitions. As used in [this
14 act], the follow definitions apply:

15 (1) "Burial materials" means any items placed with
16 human skeletal remains at the time of burial or in apparent
17 intentional association with the burial.

18 (2) "Committee" means the Native American advisory
19 committee established in [section 4].

20 (3) "Human burial site" means any place where human
21 remains are interred.

22 (4) "Human skeletal remains" means any part of the
23 human body in any state of decomposition.

24 (5) "Marked, unmarked, unrecorded, or unregistered
25 graves, cemeteries, or burial grounds" means any place where

1 human skeletal remains are or have been interred.

2 (6) "Scientifically justifiable" means the level of
3 justification required within the scientific community for
4 research activities, with consideration of the legal, moral,
5 and religious rights and obligations of descendants.

6 (7) "Tribal group" means any Indian tribe recognized by
7 the United States secretary of the interior or recognized as
8 a tribe by other Indian nations or tribal groups.

9 NEW SECTION. Section 4. Committee -- composition --
10 rights. (1) There is established a Native American advisory
11 committee. The committee is comprised of:

12 (a) one person appointed by the tribal governmental
13 body of each of the seven Indian reservations in Montana;
14 and

15 (b) one appointee from the Little Shell band of
16 Chippewa Indians.

17 (2) The committee is vested with all rights under law,
18 including those in [this act], to act as a person of kinship
19 to the deceased, including the right to make decisions
20 pertaining to the proper treatment and disposition of the
21 human skeletal remains and associated burial materials in
22 question.

23 NEW SECTION. Section 5. Inadvertent disturbance --
24 reporting requirements -- disinterment, curation, and
25 reinterment. (1) [Section 7] does not apply to a person who,

1 pursuant to archaeological excavation or agricultural,
2 mining, construction, or other ground-disturbing activities,
3 inadvertently disturbs a human burial site if, by the most
4 expeditious means available, the disturbance is reported to
5 the county coroner, county sheriff, or county medical
6 examiner.

7 (2) The county coroner, county sheriff, or county
8 medical examiner shall, in the case of a burial he has
9 reason to believe is of Native American origin, notify the
10 state historical preservation officer. If it is determined
11 that the remains are those of an individual belonging to a
12 particular tribal group, the state historical preservation
13 officer is required to notify the identified tribal group
14 within 24 hours. When the identification of next of kin or
15 descendants is possible, the state historical preservation
16 officer is required to notify those next of kin or
17 descendants within 24 hours.

18 (3) In the case of a burial believed to be of Native
19 American origin when no particular tribal relationship, next
20 of kin, or familial relationship can be established, the
21 state historical preservation officer shall, within 72
22 hours, notify the committee.

23 (4) When scientifically justifiable, the human skeletal
24 remains, human burial site, and associated burial materials
25 may be studied in place. Excavation or disinterment may

1 occur only upon a showing of scientific justification or to
2 prevent further disturbance or destruction, provided that
3 the excavation and disinterment occur following consultation
4 with and the concurrence of the tribal group, next of kin,
5 or descendants identified pursuant to subsection (2).
6 Curation may take place upon a showing of scientific
7 justification and following consultation with and
8 concurrence by the tribal group, next of kin, or descendants
9 identified pursuant to subsection (2).

10 (5) No period of in-place study or curation
11 contemplated under [this act] may exceed 6 months without a
12 showing of scientific justification and following
13 consultation with and concurrence by the tribal group, next
14 of kin, or descendants identified pursuant to subsection
15 (2).

16 (6) Reinterment may take place only after consultation
17 with and concurrence of the tribal group, next of kin, or
18 descendants identified pursuant to subsection (2). In
19 general, reinterment must occur in as close approximation to
20 the original site as possible and be consistent with the
21 original circumstance of the burial. Reinterment costs must
22 be borne by the agency or individual who requested the
23 in-place study, disinterment, or curation described in this
24 section.

25 NEW SECTION. Section 6. Repatriation and reinterment.

1 (1) Whenever the human skeletal remains or burial materials
2 presently in the possession of state institutions, political
3 subdivisions, or entities can be identified by a particular
4 tribal group, the next of kin, or the descendants, the
5 group, next of kin, or descendants may petition the entity
6 in possession to repatriate and reinter the remains or
7 materials.

8 (2) Repatriation must occur absent a showing of
9 scientific justification consistent with the showing
10 required in [section 5(4)].

11 **NEW SECTION. Section 7. Prohibited acts -- penalties.**

12 (1) A person who purposely or knowingly pilfers, disturbs,
13 destroys, or permits pilferage, disturbance, or destruction
14 of a marked, unmarked, unrecorded, or unregistered grave,
15 cemetery, or burial ground and associated burial materials
16 is guilty of a misdemeanor and may be fined not less than
17 \$500 or more than \$5,000, be imprisoned for up to 6 months,
18 or both. A person convicted of a subsequent offense is
19 guilty of a felony and may be fined not less than \$10,000,
20 be imprisoned for up to 1 year, or both.

21 (2) A person who for commercial use knowingly
22 possesses, buys, sells, transports, barter, or displays
23 human skeletal remains or associated burial materials
24 acquired in violation of [this act] is guilty of a felony
25 and may be fined up to \$20,000, be imprisoned for up to 2

1 years, or both. A person convicted of a subsequent offense
2 may be fined up to \$100,000, be imprisoned for up to 10
3 years, or both.

4 (3) A person who, without consent of the tribal group,
5 next of kin, or descendants identified pursuant to [section
6 5(2)], purposely or knowingly discloses information
7 designated as "confidential" by the state historical
8 preservation officer, tribal group, next of kin, or
9 descendants is guilty of a misdemeanor and may be fined up
10 to \$5,000, be imprisoned for up to 6 months, or both.
11 Subsequent violations constitute a felony punishable by a
12 \$10,000 fine, a 1-year imprisonment, or both.

13 **NEW SECTION. Section 8. Criminal enforcement and civil**
14 **actions -- costs.** (1) The state and its political
15 subdivisions are responsible for enforcement of [this act].
16 A criminal action may be initiated by a county attorney for
17 violation of [this act] upon request of the state historical
18 preservation officer, tribal group, next of kin, or
19 descendants of the individual whose human skeletal remains
20 or human burial site is in question. Civil actions for
21 damages resulting from violations of [this act] may be
22 initiated by the state historical preservation officer,
23 tribal group, next of kin, or descendants.

24 (2) Costs of any civil action to enforce the provisions
25 of [this act] must be awarded to the successful complainant.

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